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Attorneys for Defendant
SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN FRANCISCO

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SUSAN LEW,

Plaintiff,

v.

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE CITY AND COUNTY
OF SAN FRANCISCO, and DOES 1
THROUGH 50, INCLUSIVE,

Defendant.

No. C 06 3098 CRB

**STIPULATION FOR FILING OF
AMENDED ANSWER**

IT IS HEREBY STIPULATED by and between the parties hereto through their respective counsel of record that Defendant may file an Amended Answer, a copy of which is attached hereto.

IT IS FURTHER STIPULATED that Plaintiff acknowledges service of the Amended Answer on May 30 2007. Objection to the Amended Answer is due June 19, 2007.

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1 DATED: May 18, 2007

LAW OFFICES OF JOHN H. SCOTT

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4 By: 

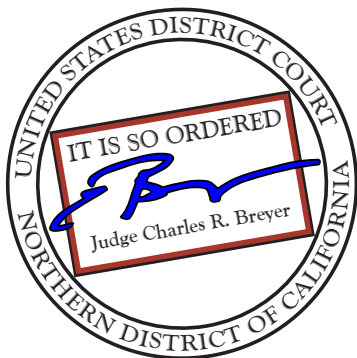
5 JOHN H. SCOTT
6 ELIZABETH N. DE VRIES
7 Attorneys for Plaintiff, Susan Lew

8 DATED: May 18, 2007

HANSON BRIDGETT MARCUS
VLAHOS & RUDY, LLP

9
10
11 By: 

12 JOHN D. ADKISSON
13 GAIL CACCHETTINI WHALEY
14 ELI R. MAKUS
15 Attorneys for Defendant
16 SUPERIOR COURT OF CALIFORNIA,
17 COUNTY OF SAN FRANCISCO



June 4, 2007

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SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN FRANCISCO

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SUSAN LEW,

Plaintiff,

v.

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE CITY AND COUNTY
OF SAN FRANCISCO, and DOES 1
THROUGH 50, INCLUSIVE,

Defendant.

No. C 06 3098 MEJ

**DEFENDANT'S AMENDED ANSWER TO
PLAINTIFF'S COMPLAINT**

NOW COMES DEFENDANT SUPERIOR COURT OF CALIFORNIA, COUNTY OF
SAN FRANCISCO ("Defendant") and answers Plaintiff Susan Lew's ("Plaintiff") Complaint for
Damages and Injunctive Relief ("Complaint") as follows:

1. As to the allegations contained in Paragraph 1 of the Complaint, Defendant admits
that Plaintiff's Complaint contains causes of action pursuant to Title VII, 42 U.S.C. § 2000e, 29
U.S.C. § 2601, Cal. Gov. Code § 12940, Cal. Gov. Code § 12945.2, Cal. Civil Code § 52.1 and a
cause of action for wrongful termination in violation of public policy. Except as so expressly
admitted, Defendant denies each and every, all and singular, generally and specifically the

1 allegations contained therein.

2 2. As to the allegations contained in Paragraph 2 of the Complaint, Defendant neither
3 admits nor denies the allegations for the reason that such allegations are legal conclusions to
4 which no answer is required. To the extent an answer is required, Defendant denies each and
5 every, all and singular, generally and specifically the allegations contained therein.

6 3. As to the allegations contained in Paragraph 3 of the Complaint, admits that
7 Plaintiff was employed in San Francisco. Except as so expressly admitted, Defendant denies each
8 and every, all and singular, generally and specifically the remaining allegation contained in the
9 first sentence of Paragraph 3 of the Complaint. As to the remaining allegations contained in
10 Paragraph 3 of the Complaint, Defendant neither admits nor denies the allegations for the reason
11 that such allegations are legal conclusions to which no answer is required.

12 4. As to the allegations contained in Paragraph 4 of the Complaint, Defendant admits
13 that Plaintiff is an Asian-American woman over the age of 40 who was employed by the Superior
14 Court of California, County of San Francisco.

15 5. As to the allegations contained in Paragraph 5 of the Complaint, Defendant admits
16 that its place of business is located in the City and County of San Francisco. As to the remaining
17 allegations contained in Paragraph 5 of the Complaint, Defendant neither admits nor denies the
18 allegations for the reason that such allegations are legal conclusions to which no answer is
19 required.

20 6. As to the allegations contained in Paragraph 6 of the Complaint, Defendant denies
21 that the acts or omissions alleged by Plaintiff occurred. As to the remaining allegations,
22 Defendant neither admits nor denies the allegations as no facts requiring an answer are pled.

23 7. As to the allegations contained in Paragraph 7 of the Complaint, Defendant neither
24 admits nor denies the allegations for the reason that such allegations are legal conclusions to
25 which no answer is required. To the extent that an answer is required, Defendant denies each and
26 every, all and singular, generally and specifically the allegations contained therein.

27 8. As to the allegations contained in Paragraph 8 of the Complaint, Defendant denies
28 each and every, all and singular, generally and specifically the allegations contained therein.

1 9. As to the allegations contained in Paragraph 9 of the Complaint, Defendant admits
2 that Plaintiff filed a government tort claim, which was denied. As to Plaintiff's allegations
3 regarding acts by the City Attorney of the City and County of San Francisco, Defendant responds
4 that it lacks sufficient information upon which to form a belief, and based upon such lack of
5 information and belief, denies each and every, all and singular, generally and specifically the
6 allegation contained therein. Except as so expressly admitted, Defendant denies each and every,
7 all and singular, generally and specifically the allegations contained therein.

8 10. As to the allegations contained in Paragraph 10 of the Complaint, Defendant
9 admits that Plaintiff filed a charge of discrimination and retaliation with the California
10 Department of Fair Employment and Housing and a charge of discrimination with the Equal
11 Employment Opportunity Commission. Defendant admits that Susan Lew received a right to sue
12 letter from the U. S. Department of Justice. Defendant denies that the dates listed by Plaintiff in
13 Paragraph 10 are correct. Except as so admitted, Defendant denies each and every , all and
14 singular, generally and specifically, the allegations contained therein.

15 11. As to the allegations contained in Paragraph 11 of the Complaint, Defendant
16 admits, on information and belief, that Plaintiff correctly states her California State Bar number
17 and her year of admission to the California Bar.

18 12. As to the allegations contained in Paragraph 12 of the Complaint, Defendant
19 admits that Plaintiff was hired in May 1989 to work as an attorney for the San Francisco
20 Municipal Court. As to the remaining allegations in Paragraph 12 of the Complaint, Defendant
21 responds that it lacks sufficient information upon which to form a belief, and based upon such
22 lack of information and belief, denies each and every, all and singular, generally and specifically
23 the allegations contained therein.

24 13. As to the allegations contained in Paragraph 13 of the Complaint, Defendant
25 admits that Plaintiff worked as a research attorney for Defendant's Law and Motion Department
26 and the Discovery Department. Defendant further admits that Plaintiff worked for the Honorable
27 David Garcia as a research attorney. Except as so expressly admitted, Defendant denies each and
28 every, all and singular, generally and specifically the allegations contained therein.

1 14. As to the allegations contained in Paragraph 14 of the Complaint, Defendant
2 admits, on information and belief, that Plaintiff served as a Judge Pro Tempore for the Alameda
3 Superior Court. Defendant further admits that Plaintiff served as Judge Pro Tempore for the San
4 Francisco Superior Court. Except as so expressly admitted, Defendant denies each and every, all
5 and singular, generally and specifically the allegations contained therein.

6 15. As to the allegations contained in Paragraph 15 of the Complaint, Defendant
7 admits that in December 2001, Plaintiff took a leave of absence to run for an open seat on the San
8 Francisco Superior Court. As to Plaintiff's allegations contained in the second sentence of
9 Paragraph 15 of the Complaint, Defendant responds that it lacks sufficient information upon
10 which to form a belief, and based upon such lack of information and belief, denies each and
11 every, all and singular, generally and specifically the allegations contained therein.

12 16. As to the allegations contained in Paragraph 16 of the Complaint, Defendant
13 admits that Plaintiff returned to work in March 2002 and was assigned to the Discovery
14 Department. Except as so expressly admitted, Defendant denies each and every, all and singular,
15 generally and specifically the allegations contained therein.

16 17. As to the allegations contained in Paragraph 17 of the Complaint, Defendant
17 admits that in October 2003, Plaintiff was temporarily assigned to the Probate Department where
18 she worked as a research attorney for the Honorable John Dearman. Except as so expressly
19 admitted, Defendant denies each and every, all and singular, generally and specifically the
20 allegations contained therein.

21 18. As to the allegations contained in Paragraph 18 of the Complaint, Defendant
22 responds that it lacks sufficient information upon which to form a belief, and based upon such
23 lack of information and belief, denies each and every, all and singular, generally and specifically
24 the allegations contained therein.

25 19. As to the allegations contained in Paragraph 19 of the Complaint, Defendant
26 admits that in November 2004, Plaintiff was assigned to the floater pool as a research attorney.
27 Defendant further admits that as of November 2004, Plaintiff had worked for Defendant as a
28 research attorney for over fifteen years. Except as so expressly admitted, Defendant denies each

1 and every, all and singular, generally and specifically the allegations contained therein.

2 20. As to the allegations contained in Paragraph 20 of the Complaint, Defendant
3 admits that Plaintiff was assigned to the Appellate Division as a research attorney effective
4 January 1, 2005. Except as so expressly admitted, Defendant denies each and every, all and
5 singular, generally and specifically, the allegations contained therein.

6 21. As to the allegations contained in Paragraph 21 of the Complaint, Defendant
7 admits that Plaintiff told the Honorable Diane Elan Wick and the Honorable John J. Conway that
8 her husband was ill in December 2004. As to the remaining allegations, Defendant responds that
9 it lacks sufficient information to form a belief, and based upon such lack of information and
10 belief, denies each and every, all and singular, generally and specifically, the allegations
11 contained therein.

12 22. As to the allegations contained in Paragraph 22 of the Complaint, Defendant
13 responds that it lacks sufficient information to form a belief, and based upon such lack of
14 information and belief, denies each and every, all and singular, generally and specifically the
15 allegations contained therein.

16 23. As to the allegations contained in Paragraph 23 of the Complaint, Defendant
17 admits that, Plaintiff showed the Honorable Judge Robert Dondero a Family Medical Leave Act
18 request form. Defendant further admits that Plaintiff told the Honorable Judge Robert Dondero in
19 January 2005 that her husband was ill. Except as so expressly admitted, Defendant denies each
20 and every, all and singular, generally and specifically the allegations contained therein.

21 24. As to the allegations contained in Paragraph 24 of the Complaint, Defendant
22 admits that prior to 2004 there were no written performance reviews in Plaintiff's personnel file.
23 Except as so expressly admitted, Defendant denies each and every, all and singular, generally and
24 specifically the allegations contained therein.

25 25. As to the allegations contained in Paragraph 25 of the Complaint, Defendant
26 admits that on February 18, 2005, Defendant's Appellate Division conducted a performance
27 review of Plaintiff. Except as so expressly admitted, Defendant denies each and every, all and
28 singular, generally and specifically the allegations contained therein.

1 26. As to the allegations contained in Paragraph 26 of the Complaint, Defendant
2 responds that it lacks sufficient information to form a belief, and based upon such lack of
3 information and belief, denies each and every, all and singular, generally and specifically the
4 allegations contained therein.

5 27. As to the allegations contained in Paragraph 27 of the Complaint, Defendant
6 admits that on March 21, 2005, Plaintiff submitted a request for Family Medical Leave. Except
7 as so expressly admitted, Defendant denies each and every, all and singular, generally and
8 specifically the allegations contained therein.

9 28. As to the allegations contained in Paragraph 28 of the Complaint, Defendant
10 admits that on or about March 21, 2005, Plaintiff was temporarily assigned to the Law and
11 Motion Department for an evaluation period. Except as so expressly admitted, Defendant denies
12 each and every, all and singular, generally and specifically the allegations contained therein.

13 29. As to the allegations contained in Paragraph 29 of the Complaint, Defendant
14 denies each and every, all and singular, generally and specifically the allegations contained
15 therein.

16 30. As to the allegations contained in Paragraph 30 of the Complaint, Defendant
17 admits that on May 12, 2005, Gordon Park-Li and Cheryl Martin provided Plaintiff with a written
18 Notice of Intended Dismissal. Except as so expressly admitted, Defendant denies each and every,
19 all and singular, generally and specifically the allegations contained therein.

20 31. As to the allegations contained in Paragraph 31 of the Complaint, Defendant
21 admits that Plaintiff prepared a written response to the Notice of Intended Dismissal. Except as
22 so expressly admitted, Defendant denies each and every, all and singular, generally and
23 specifically the allegations contained therein.

24 32. As to the allegations contained in Paragraph 32 of the Complaint, Defendant
25 denies each and every, all and singular, generally and specifically the allegations contained
26 therein.

27 33. As to the allegations contained in Paragraph 33 of the Complaint, Defendant
28 denies each and every, all and singular, generally and specifically the allegations contained

1 therein.

2 34. As to the allegations contained in Paragraph 34 of the Complaint, Defendant
3 denies each and every, all and singular, generally and specifically the allegations contained
4 therein.

5 35. As to the allegations contained in Paragraph 35 of the Complaint, Defendant
6 denies each and every, all and singular, generally and specifically the allegations contained
7 therein.

8 36. As to the allegations contained in Paragraph 36 of the Complaint, Defendant
9 denies each and every, all and singular, generally and specifically the allegations contained
10 therein.

11 37. As to the allegations contained in Paragraph 37 of the Complaint, Defendant
12 denies each and every, all and singular, generally and specifically the allegations contained
13 therein.

14 38. As to the allegations contained in Paragraph 38 of the Complaint, Defendant
15 incorporates and realleges by reference all of its responses to all prior paragraphs of the
16 Complaint as if fully set forth herein.

17 39. As to the allegations contained in Paragraph 39 of the Complaint, Defendant
18 neither admits nor denies the allegations for the reason that such allegations are legal conclusions
19 to which no answer is required.

20 40. As to the allegations contained in Paragraph 40 of the Complaint, Defendant
21 denies each and every, all and singular, generally and specifically the allegations contained
22 therein.

23 41. As to the allegations contained in Paragraph 41 of the Complaint, Defendant
24 incorporates and realleges by reference all of its responses to all prior paragraphs of the
25 Complaint as if fully set forth herein.

26 42. As to the allegations contained in Paragraph 42 of the Complaint, Defendant
27 neither admits nor denies the allegations for the reason that such allegations are legal conclusions
28 to which no answer is required.

1 43. As to the allegations contained in Paragraph 43 of the Complaint, Defendant
2 denies each and every, all and singular, generally and specifically the allegations contained
3 therein.

4 44. As to the allegations contained in Paragraph 44 of the Complaint, Defendant
5 incorporates and realleges by reference all of its responses to all prior paragraphs of the
6 Complaint as if fully set forth herein.

7 45. As to the allegations contained in Paragraph 45 of the Complaint, Defendant
8 neither admits nor denies the allegations for the reason that such allegations are legal conclusions
9 to which no answer is required.

10 46. As to the allegations contained in Paragraph 46 of the Complaint, Defendant
11 denies each and every, all and singular, generally and specifically the allegations contained
12 therein.

13 47. As to the allegations contained in Paragraph 47 of the Complaint, Defendant
14 incorporates and realleges by reference all of its responses to all prior paragraphs of the
15 Complaint as if fully set forth herein.

16 48. As to the allegations contained in Paragraph 48 of the Complaint, Defendant
17 neither admits nor denies the allegations for the reason that such allegations are legal conclusions
18 to which no answer is required.

19 49. As to the allegations contained in Paragraph 49 of the Complaint, Defendant
20 denies each and every, all and singular, generally and specifically the allegations contained
21 therein.

22 50. As to the allegations contained in Paragraph 50 of the Complaint, Defendant
23 incorporates and re-alleges by reference all of its responses to all paragraphs of the Complaint as
24 if full set forth herein.

25 51. As to the allegations contained in Paragraph 50 (sic) of the Complaint, Defendant
26 neither admits nor denies the allegations for the reason that such allegations are legal conclusions
27 to which no answer is required.

28 52. As to the allegations contained in Paragraph 51 (sic) of the Complaint, Defendant

1 denies each and every, all and singular, generally and specifically the allegations contained
2 therein.

3 53. As to the allegations contained in Paragraph 52 (sic) of the Complaint, Defendant
4 incorporates and re-alleges by reference all of its responses to all paragraphs of the Complaint as
5 if full set forth herein.

6 54. As to the allegations contained in Paragraph 53 (sic) of the Complaint, Defendant
7 neither admits nor denies the allegations for the reason that such allegations are legal conclusions
8 to which no answer is required.

9 55. As to the allegations contained in Paragraph 54 (sic) of the Complaint, Defendant
10 denies each and every, all and singular, generally and specifically the allegations contained
11 therein.

12 **AFFIRMATIVE DEFENSES**

13 **FIRST AFFIRMATIVE DEFENSE**

14 (Failure to State Claim)

15 Plaintiff's Complaint, and each cause of action contained therein, fails to state facts
16 sufficient to constitute a claim upon which relief can be granted.

17 **SECOND AFFIRMATIVE DEFENSE**

18 (Statutes of Limitation)

19 Plaintiff's Complaint, and each cause of action contained therein, is barred by the
20 applicable statutes of limitation as set forth in California Code of Civil Procedure sections 335.1
21 and 338, California Government Code sections 945.6 and 12965, 42 U.S.C. section 2000e-5, 29
22 U.S.C. section 2617(c) and by any and all other applicable statutes of limitation.

23 **THIRD AFFIRMATIVE DEFENSE**

24 (Failure to Exhaust Administrative Remedies)

25 Plaintiff's Complaint, and each cause of action contained therein, is barred to the extent
26 that Plaintiff has failed to exhaust her administrative remedies as required by the California
27 Government Code section 12960 and 42 U.S.C. section 2000e-5(e), and any and all other
28 applicable statutes.

FOURTH AFFIRMATIVE DEFENSE

(Scope of Administrative Remedies)

To the extent that Plaintiff's causes of action for employment discrimination state claims under the California Fair Employment and Housing Act, California Government Code section 12940 *et seq.*, the California Family Rights Act, California Government Code section 12945.2(a) and/or Title VII, 42 U.S.C. section 2000e *et seq.*, that exceed the scope of Plaintiff's administrative charges, the cause of action is barred by Plaintiff's failure to exhaust her administrative remedies.

FIFTH AFFIRMATIVE DEFENSE

(Exclusive Remedy of Workers' Compensation Act)

To the extent that Plaintiff's Complaint, and each cause of action contained therein, seek damages for alleged physical and/or emotional injury, Plaintiff's exclusive remedy is provided by the California Workers' Compensation Act, California Labor Code section 3200 *et seq.*

SIXTH AFFIRMATIVE DEFENSE

(Causation)

Plaintiff's Complaint, and each cause of action contained therein, is barred because if Plaintiff suffered any damages at all, no alleged act or omission by Defendant were the actual or proximate cause of said damages to Plaintiff.

SEVENTH AFFIRMATIVE DEFENSE

(Waiver)

Plaintiff's Complaint, and each cause of action contained therein, is barred by the doctrine of waiver based on Plaintiff's conduct, acts and omissions.

EIGHTH AFFIRMATIVE DEFENSE

(Estoppel)

Plaintiff's Complaint, and each cause of action contained therein, is barred by the doctrine of estoppel based on Plaintiff's own conduct, acts or omissions.

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NINTH AFFIRMATIVE DEFENSE

(Laches)

Plaintiff's Complaint, and each cause of action contained therein, is barred by the doctrine of laches based on Plaintiff's own conduct, acts or omissions.

TENTH AFFIRMATIVE DEFENSE

(Managerial Discretion/Business Judgment)

Plaintiff's Complaint, and each purported cause of action contained therein, is barred because Defendant's conduct about which Plaintiff complains was a fair and reasonable exercise of managerial discretion undertaken for a fair and honest reason as a result of business necessity and reflects its good faith, nondiscriminatory business judgment.

ELEVENTH AFFIRMATIVE DEFENSE

(Failure to Mitigate Damages)

Plaintiff's Complaint, and each cause of action contained therein, is barred by Plaintiff's failure to mitigate her alleged damages.

TWELFTH AFFIRMATIVE DEFENSE

(Emotional Distress)

Any emotional distress allegedly suffered by Plaintiff is not attributable to Defendant or any conduct for which Defendant would be liable.

THIRTEENTH AFFIRMATIVE DEFENSE

(After Acquired Evidence)

Each of Plaintiff's causes of action may be barred by after-acquired evidence and/or any damages Plaintiff may have should be reduced as a result of such after-acquired evidence.

FOURTEENTH AFFIRMATIVE DEFENSE

(Governmental Immunities)

Plaintiff's Complaint, and each cause of action contained therein, is barred either in whole or in part by the provisions of California Government Code sections 815, 815.2, 815.3, 820.2, and 821.6.

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FIFTEENTH AFFIRMATIVE DEFENSE

(11th Amendment Immunity)

Plaintiff's Complaint, and each cause of action contained therein, is barred either in whole or in part by the Eleventh Amendment.

SIXTEENTH AFFIRMATIVE DEFENSE

(Failure to Comply With Tort Claims Act)

Plaintiff's Complaint, and each cause of action contained therein, is barred because Plaintiff has failed to comply with the applicable requirements of the California Tort Claims Act, California Government Code section 900 *et seq.*

SEVENTEENTH AFFIRMATIVE DEFENSE

(Additional Defenses)

Because Plaintiff's Complaint is vague, ambiguous and couched in conclusory terms, Defendant cannot fully anticipate all defenses that may be applicable to this action. Accordingly, Defendant reserves the right to assert additional defenses if and to the extent that such defenses are applicable.

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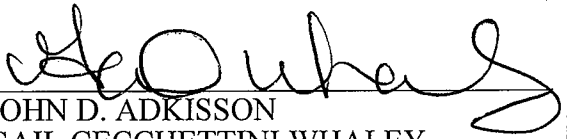
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WHEREFORE, Defendant prays as follows:

1. That Plaintiff take nothing by her Complaint and judgment be entered for Defendant;
2. That Defendant be awarded its costs of suit incurred herein;
3. That Defendant be awarded its reasonable attorney's fees; and
4. That Defendant be granted such other and further relief as the Court deems just and proper.

DATED: May 30, 2007

HANSON BRIDGETT MARCUS
VLAHOS & RUDY, LLP

By: 
JOHN D. ADKISSON
GAIL CECCHETTINI WHALEY
ELI R. MAKUS
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